

REMARKS

Rejected claims 2, 3, 4 have been canceled without prejudice.

Claims 1 and 5-9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaska '605. This rejection is respectfully traversed.

These claims specifically recite “forming an opening in a first reflection disposed between the left and right superior pulmonary veins,” and “entering through the opening formed in the first reflection to form an opening in a second reflection disposed between the superior vena cava and the right superior pulmonary vein,” and “advancing the surgical instrument through the opening formed in the second reflection” and “forming an opening in a third reflection disposed between the inferior vena cava and the left inferior pulmonary vein.”

In addition, the dependent claims are further limited by such specific recitations as “forming an opening in one of the first, second and third reflections includes grasping a portion of the reflection; and cutting the grasped portion of the reflection to form an aperture therein,” or “advancing the surgical instrument through the opening formed in the second reflection includes grasping through the opening formed in the first reflection the surgical instrument positioned within the transverse pericardial sinus for manipulating therein the surgical instrument through the opening formed in the second reflection” or “advancing the surgical

instrument through the opening formed in the third reflection includes grasping through the opening formed in the third reflection the surgical instrument advanced through the opening formed in the second reflection; and pulling the grasped surgical instrument through the opening formed in the third reflection into the oblique pericardial sinus,” or “retracting the endoscopic cannula from along the said path, leaving the surgical instrument disposed within the transverse pericardial sinus; re-entering the endoscopic cannula through the entry incision...,” or “passing an instrument through the instrument channel of the endoscopic cannula so positioned to form said opening in the first reflection,” or “in which a distal end of the surgical instrument is clasped to a portion of the surgical instrument disposed intermediate the opening formed in the pericardium near the apex region and the left pulmonary veins to form a loop of the tissue-ablating probe.”

These aspects of the claimed invention establish openings through the reflections through which a surgical instrument can pass or penetrate.

These aspects of the claimed invention are not disclosed or even suggested by Vaska '605 whose disclosed surgical techniques are premised upon *not* having to cut or penetrate the pericardial reflections (Abstract, last lines; Col. 2, lines 63-65; Col. 10, lines 15-18). Merely surrounding to ablate and isolate the pulmonary veins is a generality espoused by the Examiner that does not sufficiently analyze the details of Applicant's more specifically claimed surgical procedure. Thus, of

the several recited steps of Applicant's main claim 1, a majority of the recited steps are not disclosed or even suggested by Vaska '605 which actually teaches *away* from Applicant's invention as claimed. And, the Examiner's analyses are not supported by this reference which admittedly "does not specifically, disclose the instantly claimed steps of forming an opening in the first, second and third reflections...." In addition, there is also no disclosure or suggestion of such claimed procedures as "advancing the surgical instrument through the opening formed in the second reflection includes grasping through the opening formed in the first reflection the surgical instrument positioned within the transverse pericardial sinus for manipulating therein the surgical instrument through the opening formed in the second reflection," or "advancing the surgical instrument through the opening formed in the third reflection includes grasping through the opening formed in the third reflection the surgical instrument advanced through the opening formed in the second reflection; and pulling the grasped surgical instrument through the opening formed in the third reflection into the oblique pericardial sinus." At best, the Examiner analyses proceed from hindsight reconstruction of Vaska '605 with an extrapolation beyond the disclosure of this reference about what "would inherently comprise ...," or "would intrinsically include ...," without an iota of suggestion of Applicant's specifically-claimed

surgical procedures found in this reference. It is therefore respectfully submitted that claims 1, 5-9 are now patentably distinguishable over the cited art.

Entry of this amendment, which is submitted to condition this application for allowance, is requested. In the event a claim rejection is continued, it is requested that this amendment be entered in order to clarify and simplify the issues for appeal.

Favorable reconsideration is solicited.

Respectfully submitted,
Albert K. Chin

Dated: 5/22/08

By: /Albert C. Smith/
Albert C. Smith, Reg. No.: 20,355
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7296
Fax: (650) 938-5200